

RONALD W. RAMM

IBLA 82-704

Decided September 7, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring Cold Spur Frac and NorMmar placer mining claims and Hot Spur Frac, Silver Reef, Woody, and Chingaderra lode mining claims null and void ab initio. CA MC 104598 through CA MC 104603

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: Effect of -- Withdrawals and
Reservations: Revocation and Restoration

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn or whether a future revocation of the withdrawal is being considered.

APPEARANCES: Ronald W. Ramm, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Ronald W. Ramm appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated March 12, 1982, declaring the Cold Spur Frac and NorMmar placer mining claims and the Hot Spur Frac, Silver Reef, Woody, and Chingaderra lode mining claims null and void ab initio. As stated in the decision:

[L]ocation notices for the above-named mining claims were filed in this for recordation under Section 314 of the Federal Land

Policy and Management Act of October 21, 1976 (43 U.S.C. § 1744; 43 CFR 3833). The Hot Spur Frac, and Cold Spur Frac claims were located January 9, 1982, the Silver Reef on January 11, 1982, the Woody, Chingaderra and NorMmar were located on January 25, 1982. The claims are located in the E 1/2 SE 1/4 NE 1/4 and NW 1/4 NE 1/4 SE 1/4 of Sec. 23, T. 9 N., R. 10 E., and N 1/2 NW 1/4 of Sec. 18, T. 11 N., R. 10 E., MD Mer. [Mount Diablo meridian].

BLM stated further in the decision:

According to the official records of this office, the N 1/2 NW 1/4 of Sec. 18, T. 11 N., R. 10 E., MD Mer., was withdrawn from public entry under First Form Withdrawal as provided in Section 3 of the Act of June 17, 1902 for use by the Bureau of Reclamation for the American River Investigations Project by Secretary's Order of September 14, 1942. The E 1/2 SE 1/4 NE 1/4 and NW 1/4 NE 1/4 SE 1/4 of Sec. 23, T. 9 N., R. 10 E., MD Mer., were withdrawn from all forms of appropriation, including the mining laws for use by the Bureau of Reclamation, by Public Land Order 2729 (Central Valley Project) of July 17, 1962 and January 15, 1942, (Nashville Reservoir Site), respectively.

Further, all lands in the N 1/2 NW 1/4 of Sec. 18, except the NW 1/4 NE 1/4 NW 1/4, are patented lands with no minerals reserved to the United States, (Patent Nos. 1631, 2489, and 3185).

Therefore, in view of the foregoing, the lands in the Cold Spur Frac, NorMmar, Hot Spur Frac, Silver Reef, Woody, and Chingaderra claims were not open to mineral location on the dates of attempted location and are hereby declared null and void ab initio -- without legal effect from the beginning. [Emphasis in original.]

In his statement of reasons for appeal, appellant states:

The area of the location of the Hot Spur Frac, Cold Spur [Frac], and Silver Reef were withdrawn because of the possible need of a dam for a power source well down stream from these claims. Since the time of the withdrawal, the area has grown in population and home construction. Large areas continue to be sold to the public and subdivisions and home building continue at a rising rate in this area. The claims (Hot Spur Frac, Cold Spur Frac and Silver Reef) are located above the subdivisions and home building, below which is the area of proposed dam site. Flooding

would occur in subdivisions and private homes well before flooding could occur near my claims. All homesites and privately owned property between my claims and proposed dam area would have to be relocated at great expense to Bureau of Land Management. I submit that the original reasons for withdrawal of the lands my claims are located on are no longer valid. Concerning the claims NorMmar, Chingaderra, and Woody. These 3 claims are located in the town of Coloma, Calif., consisting of a total acreage of approx. 11 acres. They are located at the west end of Ponderosa Camp Ground. The claims parallel highway #49 on the north and cross Marshall Hill Rd. to the west. This land was withdrawn years ago for a possible dam site of the American River below the town of Lotus, Calif. Lotus is located on the south side of highway #49. Since the time of the withdrawal of this area, the town of Coloma, Calif., has been declared a historical site. California State passed a law making it illegal to flood this town, ever. The law made provisions to flood up to and including the town of Lotus, but not Coloma. Since my claims are located above highway #49 in an area that by state law may never be flooded, I submit the reason for withdrawal of lands my claims are located on are no longer valid.

[1] Appellant does not dispute that his claims are located on withdrawn lands. He located his claims on lands included in the withdrawals on January 9, 11, and 25, 1982. It is well established that a mining claim located on a date when the lands are subject to a first form reclamation withdrawal is null and void ab initio. Susan E. Mitchell, 53 IBLA 42 (1981); Sam McCormack, 52 IBLA 56 (1981); Everett E. Willmarth, 32 IBLA 145 (1977). Since appellant's claims were located subsequent to the withdrawal, they are null and void ab initio. William C. Reiman, 54 IBLA 103 (1981).

Further, it has long been held that lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn. William C. Reiman, *supra*; United States v. Wichner, 35 IBLA 240 (1978); Tenneco Oil Co., 8 IBLA 282 (1972); David W. Harper, 74 I.D. 141 (1967). Thus, even assuming that appellant's allegations concerning the land are true, the withdrawals had not been revoked, and accordingly appellant's claims are null and void ab initio. 1/

1/ Appellant may seek to have the land in question which has not been patented opened to location, entry, and patent under the general mining laws pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976). Regulations promulgated in accordance with the Act are found at 43 CFR Subpart 3816. Application to open lands to location may be filed with BLM. 43 CFR 3816.2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

